IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Statesboro Division

IN RE:	)	Chapter 13 Case
	)	Number 98-60013
JAMES C. LYNN,	)	
	)	
Debtor.	)	
	)	
	)	FILED
JAMES C. LYNN,	)	at 12 O'clock & 25 min. P.M.
	)	Date: 9-16-99
Debtor.	)	
	)	
vs.	)	
	)	
STATE OF IOWA, CHILD SUPPORT RECOVERY UNIT	)	
	)	
Creditor.	)	
	)	

ORDER

James C. Lynn ("Debtor") objects to the proof of claim filed by the State of Iowa Child Support Recovery Unit ("Claimant"). Claimant seeks child support arrearage pursuant to Civil Action No. 2765, U.R.E.S.A. Order of Support, issed in the Superior Court of Effingham County, Georgia, on December 12, 1978. Debtor asserts that as the child support order was issued by a Georgia court, the claim

is time barred by Georgia Law. Claimant asserts that federal law calls for the Iowa statute of limitations to be applied, under which the unpaid child support can still be collected.

The facts relevant to this proceeding are as follows. Under the URESA Order of Support in Civil Action No. 2765, issued by the Superior Court of Effingham County, Georgia, Debtor was to pay child support of $25.00 per week, commencing December 16, 1978. Debtor was ordered to send the monies to the Adult Probation Office of the Effingham Court, which in turn was ordered to transmit the payments to the Clerk of Court, Dallas County Courthouse, Adel, Iowa.

Claimant shows that the $25.00 weekly payments were due through the week of July 27, 1986, when the younger of Debtor's children turned eighteen. Claimant submits that support payments were owed and paid as follows.

Year	Owed	Paid
1978	$ 75	$ 0
1979	1,300	200
1980	1,300	0
1981	1,300	0
1982	1,300	941
1983	1,325	0
1984	1,300	838
1985	1,300	763
1986	750	0
1987		465
1992		183

Total	$9,950	$3,390

Claimant further shows that $465.00 was received in 1994. It is unclear why the $3,390.00 total amount received does not reflect the $465.00. Based on the total amount that should have been paid, $9,950.00, less the disclosed total paid, $3,390.00, $6,560.00 remains due. The proof of claim is for $6,500.00.

The Claimant's response to the objection relies on 28 U.S.C. §1738B, the federal Full Faith and Credit for Child Support Orders Act ("FFCCSOA"). If a state seeks to modify, supplant, or enforce another state's child support order, FFCCSOA determines procedural matters such as jurisdiction and choice of law. 28 U.S.C. §1738B. Claimant argues that the arrearage in payments from the Georgia URESA Order falls under the governance of FFCCSOA. Claimant cites subsection (h)(3) of FFCCSOA as calling for application of the longer of the Iowa and Georgia statutes of limitations.[1]

Debtor contends that FFCCSOA does not apply to this claim.

---

[1] §1738B. Full faith and credit for child support orders
(h) Choice of Law
(3) Period of limitation. In an action to enforce arrears under a child support order, a court shall apply the statute of limitation of the forum State or the State of the Court that issued the order, whichever statute provides the longer period of limitation.

Debtor argues that this particular child support order is both issued and enforced by the same state, Georgia. Therefore, concludes Debtor, Georgia law, including the Georgia statute of limitations, governs the enforceability of this judgment.

The 1978 order is titled "U.R.E.S.A. Order for Support." The Uniform Reciprocal Enforcement of Support Act ("URESA") was a uniform state law designed to facilitate collection of child support payments when parents lived in different jurisdictions.[2] See Dept. of Human Resources v. Westmoreland, 436 S.E.2d 706, 707 (Ga.App. 1993). Questions of jurisdiction and choice of law still arose under the states' various enactments of URESA, stalling enforcement of support orders. To resolve such interstate issues, Congress enacted FFCCSOA in 1994.[3] Two years later, Congress continued streamlining collection of child support by directing the states to enact another uniform state law, the Uniform Interstate Family

---

[2] URESA was, in one form or another, adopted by each of the fifty states. Iowa's Uniform Support of Dependents Law ("USDL") was adopted in 1949, and amended in 1955 to incorporate sections of URESA. See In re Russell, 490 N.W.2d 810, 812 (Supreme Court of Iowa 1992). Georgia adopted URESA in 1958. OCGA § 19-11-40 et seq.

[3] The Full Faith and Credit for Child Support Orders Act ("FFCCSOA"), preempts any conflicting state law. It has further been held to have retroactive effect, governing interstate actions over child support orders issued prior to FCCSOA's enactment. See Kilroy v. Superior Court of Los Angeles County,63 Cal.Rptr.2d 390 (Cal.App. 1997), Kelly v. Otte, 474 S.E.2d 131, 134 (N.C.App. 1996).

Support Act ("UIFSA").[4] 42 U.S.C. §666(f). I look to the provisions of URESA to determine whether this child support order was an interstate proceeding governed by FFCCSOA.

URESA provided two methods of obtaining child support when the parties resided in different states. See Dept. of Human Resources v. Pruitt, 476 S.E.2d 764, 765 (Ga.App. 1996), In re Russell, 490 N.W.2d 810, 812 (Iowa 1992), State of Ga. v. McKenna, 315 S.E.2d 885, 887-88 (Ga. 1984). Both Iowa and Georgia case law recognized the existence of both methods. See id.

> First, if the duty of support is based upon a child support order obtained in a foreign state, the responding state may seek to register that foreign order. OCGA §§ 19-11-77 through 19-11-81. The second type of URESA action is an independent proceeding for support where the support decision is made by the responding court employing the law of the responding state. See Dept. of Human Resources v. Westmoreland, 210 G.App. 603, 436 S.E.2d 706 (1993) (this type of URESA action is not "merely a collection action, but is an independent proceeding for support").

Pruitt, 476 S.E.2d at 765.

> The Uniform Support of Dependents Law provides two procedures that a person seeking to enforce or modify a foreign support order may follow to obtain jurisdiction in an Iowa court over a responsible party who can be served in Iowa. . . .

---

[4] Congress made receipt of federal funds for child support programs contingent on a state's enacting UIFSA. 42 U.S.C. §666(f). In Georgia, UIFSA replaces URESA effective January 1, 1998, and governs all proceedings brought after that date. O.C.G.A. §19-11-100 et seq.

> Under Iowa Code section 252A.6, the person seeking to enforce or modify a foreign support order files a petition in a court in his or her resident state. The "initiating court" where the petitioner resides transmits the petition with accompanying information to an Iowa court where personal jurisdiction can be asserted over the person responsible for support, the respondent. This first procedure, termed "standard URESA," saves the petitioner from the inconvenience of traveling to the jurisdiction of the respondent's residence to enforce or modify the respondent's obligation. The second procedures available to the petitioner is "registration URESA," found in Iowa Code sections 252A.17 through .19. In this procedure, the petitioner transmits to the clerk of court of Iowa the original decree awarding support, copies of any orders of modification, and other supporting information. Iowa Code § 252A.18. Upon filing, the order shall have the same effect and be subject to the same proceedings as a support order issued in Iowa. Iowa Code § 252A.19.

Russell, 490 N.W.2d at 812.

If a child support order already existed in Iowa and was "registered" in Georgia, then FFCCSOA would govern which state's statute of limitations applied. See e.g. In re Carrier, 576 N.W.2d 97, 98 (Iowa 1998), Ga. Dep't of Human Resources v. Deason, No. A99A0934, 1999 WL 455402, at *8 (Ga.App. July 7, 1999). The plain language of FFCCSOA describes exactly this situation.

> (a) General rule. The appropriate authorities of each State--
>
> (1) shall enforce according to its terms a child support order made consistently with this section by a court of another State;

28 U.S.C. § 1738B(a)(1).

If, on the other hand, an "independent" URESA order was

issued by Georgia, then the language of FFCCSOA would not apply. The Superior Court of Effingham County could have made an independent determination, under Georgia law, regarding whether support was owed and in what amount. The Superior Court could have then entered its own support order providing for payments to be forwarded to Iowa. Claimant relies on the subsection of FFCCSOA that chooses the statute of limitation of either the "forum State" or the "State of the court that issued the order." 28 U.S.C. §1738B(h)(3). Neither term is defined in the "Definitions" subsection of the Act. 28 U.S.C. § 1738B(b). If Georgia issued an "independent" URESA order, then Georgia is both the "forum State" and "State of the court that issued the order." In that event, Georgia's statute of limitations would be the sole option. Neither this court's research nor that of parties' counsel have shown a case where an "independent" URESA judgment was evidence of an interstate collection and invoking FFCCSOA.

No evidence has been provided to indicate which of the two URESA proceedings actually happened here. Claimant presents as evidence copies of (1) the Georgia order and (2) a Schedule of Payments. Neither indicates whether Iowa had issued an order which was being enforced by Georgia. No underlying Iowa order for support was included or referenced. Debtor maintains that the URESA Order

was a domestic judgment, issued by the Georgia court and governed by Georgia law. Debtor offers neither evidence nor explanation of this contention, merely relying on the same judgment as Claimant. Neither party here proved residence of the parties prior to or at the time of the Effingham County Court order. Thus, no evidence was tendered that would show which type of URESA proceeding led to the issuance of the Order.

In the absence of such evidence, the burden of proof requirement controls the outcome of this case.

> 11 U.S.C. § 502(a) and Bankruptcy Rule 3001(f) provide that the filing of a proof of claim is prima facie evidence that a creditor's claim is valid. The . . . [objector] . . . then must produce evidence equivalent in probative value to that of the creditor to rebut the prima facie effect of the proof of claim. However, the burden of ultimate persuasion rests with the claimant. (Citations omitted.)

In re VTN, Inc., 69 B.R. 1005, 1008 (Bkrtcy.S.D.Fla. 1987). In this case the objecting party, the Debtor, has overcome the presumption in favor of the claim. The Debtor relies on the judgment of the Superior Court of Effingham County, Georgia, which is the basis for the claim, as his basis for asserting a time bar to enforcement under Georgia law. Claimant bears the burden of proving that the URESA Order was merely an enforcement by Georgia of an Iowa support order. See id. Without evidence of an Iowa support order, that burden is not met. Therefore, for purposes of

determining the validity of this claim, I must regard the URESA Order of Support as a Georgia Order, enforced in Georgia. As such, Georgia law must be applied to resolve whether Debtor must pay the outstanding child support amounts.

Effective July 1, 1997, Georgia amended its dormancy statute to exempt child support orders from dormancy. OCGA § 19-12-60(d). This amendment is not applied retroactively. Brown v. Brown, 506 S.E.2d 108, 110 (Ga. 1998). OCGA § 9-12-60(d) applies only to judgments for child support entered after July 1, 1997. Id. Therefore, the 1978 URESA Order for Support was subject to dormancy under contemporary Georgia statutes. Id., Parker v. Eason, 454 S.E.2d 460 (Ga. 1995).

Georgia dormancy statutes allow a maximum of ten years initially to enforce a judgment. "Under OCGA § 9-12-60(a), a judgment can become dormant after seven years but, pursuant to OCGA § 9-12-61, may be renewed or revived within the ensuing three-year period." Brown v. Brown, 506 S.E.2d at 109. Renewal or revival is by means of an action or scire facias. OCGA § 9-12-61. Although Claimant had attempted to garnish Debtor's wages, a garnishment proceeding is not such an "action" under OCGA § 9-12-61. See Turner v. Wood, 292 S.E.2d 558, 559 (Ga.App. 1982).

Each installment of a child support order is considered,

by operation of law, a separate judgment. OCGA § 19-6-17(e)(1). Furthermore, payments made can be applied to the oldest amounts owing. See Parker v. Eason, 454 S.E.2d at 461, Wood v. Wood, 236 S.E.2d 68, 70 (Ga. 1977). Claimant has calculated the arrearage on the child support in this manner. Claimant states that payments remain due for the weeks from August, 1981, through July, 1986. Thus, the last and most recent weekly "judgment" became due in 1986, became dormant seven years later in 1993, and became non-revivable three years after that up to 1996.

The 1978 U.R.E.S.A. Order for Support cannot be enforced after July, 1996. A claim is not allowed in bankruptcy if that claim is unenforceable against the debtor under applicable law. 11 U.S.C. § 502(b)(1). The Proof of Claim brought by Claimant is objectionable because the child support judgment is no longer enforceable.

It is, therefore, ORDERED that the Debtor's objection to the Proof of Claim brought by the State of Iowa Child Support Recovery Unit for arrearage in child support payments pursuant to Civil Action No. 2765, URESA Order for Support, Superior Court of Effingham County, Georgia, is sustained. The claim is not allowed.

JOHN S. DALIS
CHIEF UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia

this 16th Day of September, 1999.